IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 843 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SHANTABEN J SHAH & 6 - Appellant(s)
Versus
BHURABHAI MAGANBHAI & 2 - Defendant(s)

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Appearance :
MR PM RAVAL for Appellant(s) : 1 - 7.
MR GAURANG H BHATT for Defendant(s) : 1 - 3.
MR BR SHAH for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/08/2006

ORAL JUDGMENT

1. By way of the appeal the appellants have challenged the judgement and award dated 01.04.1982 passed by the Motor Accident Claims Tribunal (Aux.), Surendranagar in M.A.C. Petition No. 48 of 1980 whereby the same was dismissed.

2. The short facts of the case are that the deceased had kept contract to transport coal-ash from Halvad station. For that purpose he had hired public carrier bearing No. G.T.D. 3167 belonging to original opponent Nos. 2-3 and had gone from Dhrangadhara to Halvad.

2.1 The said pubic carrier was stopped for taking tea, snacks and to call labourers near Halvad. Thereafter when the carrier was to be started, due to failure of

self-starter it did not start. There was a slope ahead and so the driver told to push the public carrier. Therefore the deceased along with other persons started pushing to start the vehicle. While taking a turn, the front cleaner's side wheel ran over the deceased and due to shouts the driver stopped the vehicle. The leg of the deceased which was below wheel was removed. He was taken to Dhrangadhra Govt. Hospital where he died. Therefore the legal heirs of the deceased claimed petition of Rs. 2,00,000/- by way of compensation.

3. Learned advocate for the appellants has submitted that Tribunal ought to have relied upon the evidence of Dr. Pathak inasmuch as the evidence of Dr. Pathak is corroborated by the evidence of Dr. Kotadia who gave the first treatment to the deceased. In view of this, the Tribunal has committed an error in placing reliance upon the post mortem note produced at Ex. 48.

3.1 He further submitted that the Tribunal has also erred in not believing the evidence of witness Ismailbhai Hyderbhai, Exh. 82.

4. Heard. I have gone through the judgement and award of the Tribunal. It is found that death of the deceased was due to heart failure and in any case if he wanted or tried to give push to the vehicle by his own will when he

was approaching, he fell down due to entanglement of his leg in his own 'Dhoti'. There was any such injury which may result in his death. The statement of witness Ismailbhai Hyderbhai was recorded on next day of incident. No panchnama was prepared for the alleged injury. Neither Dr. Kotadia nor any other doctor revealed that there was any case papers regarding injury. Dr. Kotadia had not given any intimation to police. The leg was not at all injured due to run over or any impact of the vehicle. Under the circumstances, neither alleged injury nor cause of death has been connected with alleged accident which is also most doubtful, inconsistent and highly controversial. Ex. 84/3 revealed fracture of left femur but it is not duly proved. The appellants have failed to proved that cause of death was due to the injury or the injury could have caused death as resulted from the accident or that there was any such accident. I am of the opinion that the story of the appellants is not believable and therefore appeal deserves to be dismissed.

5. In the premises aforesaid appeal is dismissed to the aforesaid. No order as to costs.

(K.S.JHAVERI, J.)

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